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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

J.A., Petitioner, v. SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY SERVICES, Real Party in Interest.	B296915 (Los Angeles County Super. Ct. No. DK00408A)

ORIGINAL PROCEEDING; petition for extraordinary writ, Pete R. Navarro, Commissioner. Denied.

Los Angeles Dependency Lawyers, Inc., Shannon Humphrey and Brigette Dutra for Petitioner.

Mary C. Wickham, Deputy County Counsel, Kristine Miles, Assistant County Counsel, and Kimberly Roura, Deputy County Counsel for Real Party in Interest.

J.A. (father) seeks writ review of the juvenile court's order terminating his reunification services and setting a hearing under Welfare and Institutions Code section 366.26.[1] Although we find that the Department of Children and Family Services (DCFS) failed to provide reasonable reunification services to father, we nonetheless conclude that the petition must be denied because father will be incarcerated past the maximum time for him to receive those services.

BACKGROUND

I. Detention and adjudication

Mother and father have a history of domestic violence and of abusing substances, including methamphetamines. Father, a documented gang member, also has an extensive criminal history involving drug crimes. Their daughter was born in 2013. Soon thereafter, a petition was filed due to domestic violence between mother and father. That case terminated in 2014, with mother getting full legal and physical custody of the child.

Thereafter, father was incarcerated before being released on parole in March 2017. A few months later on July 17, father and mother were under the influence of drugs during a parole check. Father was arrested. DCFS detained the child, who was then four years old. After the child was detained, she told the

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[1] All further statutory references are to the Welfare and Institutions Code.

social worker that father was usually in jail, and she had never visited him there.

On July 20, 2017, DCFS filed a petition alleging that father failed to protect the child because he used methamphetamines and marijuana (§ 300, subd. (b)(1)) and alleging that he failed to protect the child from mother's substance abuse (§ 300, subd. (b)(2)). At the detention hearing, the court ordered DCFS to provide mother and father with all appropriate case referrals and ordered monitored visits.

As of August 10, 2017, father was at Pitchess Detention Center. Father told the social worker that the child meant a lot to him, and he wanted to visit her.

But, at the October 10, 2017 adjudication hearing, father was still in custody and had not visited with his daughter. The court sustained the petition and ordered reunification services for father and mother.

Father was released from jail on November 1, 2017. Since his whereabouts were unknown, DCFS initiated a due diligence search for him. The social worker also searched inmate records but father had not been rearrested.

II. Disposition

Then, on January 17, 2018, father was arrested for violating parole. It was expected that father would be transferred to Men's Central Jail in Los Angeles. A week later, at the January 23 disposition hearing, father was still in custody. The court removed the child from her parents and placed her with her grandmother. The court-ordered case plan for father included a drug and alcohol program with aftercare, random or on-demand drug and alcohol testing, parenting classes, and individual counseling to address domestic violence.

The first indication in the record that DCFS attempted to implement the case plan is a service log entry that something in writing was sent to father on March 13, 2018. Two months later, on May 21, a social worker tried to call father at Wasco State prison but father was in a temporary facility offering no programs, awaiting transfer to a permanent housing assignment, where he could ask about programs. Such transfers take about 90 days.

III. Six-month review hearing

Per a July 3, 2018 status review report prepared for the upcoming six-month review hearing, the child was doing well in grandmother's care. No visits had occurred between the child and her parents for the past six months. The social worker had no proof that parents had enrolled in any court-ordered programs, and she had been unable to contact father for a statement. DCFS recommended extending reunification services for six months.

Father, still in custody, was at the July 24, 2018 six-month review hearing.[2] He had been unable to communicate with his daughter or to participate in programs offered inside the institution, but offered that as soon as he had the opportunity, "I'm going to get in there." Father's attorney explained that father had been in "reception" so he had no opportunity to participate in programs. Counsel also referred to a "contact letter" that the social worker had recently sent to father. The court expressed concern that although it had issued the disposition order on January 23, 2018, DCFS took no action until May 18 to provide services. The court expressed its hope that

[2] At that hearing, father and child had a short visit.

DCFS would get more creative in offering services, given father's circumstances. The court suggested that DCFS send father written or visual materials, such as a DVD. Father, however, told the court he did not have access to a DVD player. The court ordered DCFS to facilitate phone contact and to help father get services.[3]

Although the court ordered phone visits, it is unclear they occurred. The record shows that at the end of August 2018 the social worker told grandmother that father could receive phone calls on Sundays at 4:00 p.m. Then, by December 10, 2018, father was in administrative segregation due to a rules violation, and presumably did not have phone access.

Per the status report for the upcoming permanency plan hearing, the child continued to do well with grandmother. The child said she had visited her father in jail, but the record contains no details about this visit. The child told mother that she did not want to see father. The social worker had no proof father was participating in or enrolled in any court-ordered programs.

IV. Permanent plan hearing

At the January 22, 2019 permanency plan hearing (§ 366.21, subd. (f)), DCFS recommended terminating

[3] Notwithstanding its statements at the hearing, the court's minute order includes a finding that DCFS had complied with the case plan by providing or offering or making active efforts to provide or offer reasonable services.

reunification services. The court set the matter for a contested hearing.[4]

The next day, January 23, 2019, the social worker emailed Corcoran prison's litigation coordinator to ask if phone calls between father and child could be facilitated and whether father had the opportunity to complete programs in custody. The coordinator advised the social worker to contact Soledad prison, where father had been transferred on January 3. The social worker left a message for Soledad's litigation coordinator on February 7 to ask about services for father. On February 12, a counselor at Soledad told the social worker that she was authorized to answer only general questions and that Soledad offered vocational training programs, anger management, and domestic violence and substance abuse awareness programs. The counselor referred the social worker to a lieutenant to discuss arranging phone calls, and, on February 22, the lieutenant informed the social worker that telephonic contact could be arranged Monday through Friday, excluding holidays, between 6:00 a.m. and 3:00 p.m. Because grandmother and the child were not home during those hours, the social worker asked if weekend telephone calls were possible. The record does not contain an answer to that question.

At the March 8, 2019 contested hearing, father was still incarcerated with an October 24, 2019 release date. Father's counsel argued that DCFS had not provided reasonable services and asked to continue the hearing for six more months. Counsel

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[4] As father was present at the hearing, the court ordered an after-court visit. Because the child had expressed hesitance to visit father, the court let the child's counsel decide whether a visit would occur.

pointed out that the social worker first attempted on January 23, 2019 to facilitate visitation. DCFS did not dispute that the social worker first reached out via email to father on December 10, 2018 and "services weren't really offered" until January 23, 2019.

Even so, the court found that, under the circumstances, DCFS had made reasonable reunification efforts. The court noted that as of May 2018 father was at a temporary holding facility for about 90 days, thereby taking the case to about September 2018. Thereafter, "there were efforts to communicate with the prison officials and father was in an administrative segregation." The court found that returning the child to the parents would create a substantial risk of detriment to her safety, protection or physical and emotional wellbeing and there was not a reasonable probability she would be returned to the parents by the 18-month review. The court terminated reunification services and set a hearing for a permanent plan (§ 366.26), with legal guardianship with grandmother appearing to be the most appropriate plan.

DISCUSSION

When child dependency proceedings are commenced, family preservation, with the attendant reunification plan, is the first priority. (*Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 69.) DCFS therefore must make a good faith effort to develop and to implement reasonable services responsive to each family's unique needs, notwithstanding the difficulties in doing so and the prospects of success. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1014–1015 (*Mark N.*).) This also is true for incarcerated parents, because "[t]here is no 'Go to jail, lose your child' rule in California." (*In re S.D.* (2002) 99 Cal.App.4th 1068, 1077.)

For incarcerated parents, the court shall order reunification services unless, by clear and convincing evidence, services would be detrimental to the child. (§ 361.5, subd. (e)(1).) In determining the content of reasonable services, the court shall consider the particular barriers to an incarcerated parent's access to court-mandated services and ability to maintain contact with the child, and shall document this information in the child's case plan. (*Ibid.*) DCFS must identify the problems leading to the loss of custody, offer services designed to remedy those problems, maintain reasonable contact with the parents, and make reasonable efforts to assist the parents in areas where compliance proves difficult. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345; see *In re K.C.* (2012) 212 Cal.App.4th 323, 329–330.) DCFS, not the incarcerated parent, must preliminarily identify available services. (*Mark N.*, *supra*, 60 Cal.App.4th at p. 1012.) Reunification services for incarcerated parents may include telephone calls, transportation services, visitation services, counseling, parenting classes, or vocational training programs, if access is provided. (§ 361.5, subd. (e)(1).) The adequacy of DCFS's efforts to provide suitable services is judged according to the circumstances of the particular case. (*In re Ronell A.* (1995) 44 Cal.App.4th 1352, 1362.)

We review an order terminating reunification services for substantial evidence. (*Fabian L. v. Superior Court* (2013) 214 Cal.App.4th 1018, 1028; see *T.J. v. Superior Court* (2018) 21 Cal.App.5th 1229, 1238–1239.) Thus, we view the evidence in a light most favorable to the respondent, indulging all reasonable and legitimate inferences to uphold the judgment. (*In re Ronell A.*, *supra*, 44 Cal.App.4th at pp. 1361–1362.)

In determining whether DCFS provided reasonable reunification services to father here, we begin with recognizing the difficulties of providing such services to an incarcerated parent. Locating incarcerated parents and identifying available programs and trying to work with prison officials to get the parent into the programs can be difficult. The Department of Corrections and Rehabilitation run our prisons, not DCFS. (*Mark N.*, *supra*, 60 Cal.App.4th at p. 1013.) That being said, any difficulties inherent in providing reunification services to an incarcerated parent do not obviate DCFS's duty to make a good faith effort to provide reasonable services.

DCFS likely failed in its obligations to father. The first six-month review period began on January 23, 2018, when the court issued its disposition order and at which time father was incarcerated.[5] During that time, DCFS made just two attempts to contact father. The first, a letter to father, was in March 2018, two months into the six-month period. The second attempt occurred four months into the period, in May, by which time father was in a temporary facility offering no services and awaiting transfer to a permanent facility that might have programs. Hence, in six months, DCFS made two cursory attempts to comply with the case plan. Two contacts in six months is arguably insufficient to satisfy DCFS's obligation to provide reasonable reunification services.

This is true even though during some portion of that first review period father could not receive services because he was in

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[5] Although father did not appeal the reasonable services finding the court made at the six-month review hearing, the minimal services DCFS provided during that period provide context to the following six-month period.

a temporary facility. The record fails to show that phone calls could not have taken place during that time. Moreover, there is no evidence that the social worker, for example, asked about the possibility of phone calls and what programs, if any, were available to father. Our point is this: while father may have been in no position to avail himself of services, the record is devoid of a reasonable attempt by DCFS to ascertain the existence of such services. These terse efforts explain the court's advice to DCFS to exercise creativity.

During the following 12-month review period, DCFS did somewhat better. A service log entry indicates that the social worker tried to arrange phone visits, because on August 27, 2018 she told grandmother that father could receive phone calls on Sundays at 4:00 p.m. The record, however, does not show whether calls occurred. For the next two months, the record does not show that DCFS tried to service father by contacting him and prison coordinators to ascertain the availability of services. Delay in identifying programs is a ground to find that DCFS failed to provide reasonable services. (*T.J. v. Superior Court*, *supra*, 21 Cal.App.5th at p. 1242.) The delay here may have been significant, because by December 10, 2018, father was in administrative segregation for a rules violation and, inferentially, unable to receive services. However, the record does not show how long father was segregated. Was it for a day, a week, months? In any event, a concerted effort to ascertain what services were available to father did not happen until January 23, 2019, which was *the day after* the permanent plan hearing under section 366.21, subdivision (f), was scheduled to occur.

Despite DCFS's scant efforts to provide reunification services to father, we cannot conclude that further services is the proper remedy. Rather, reunification services for an incarcerated parent are subject to the applicable time limitations in section 361.5, subdivision (a), i.e., a maximum period not to exceed either 18 months (§ 361.5, subd. (a)(3)(A)) or 24 months (§ 361.5, subd. (a)(4)(A)) after the date the child was originally removed from his or her parent's physical custody. Here, the child has been out of her parents' custody since July 17, 2017. Thus, by the time of the contested hearing in March 2019, she had been out of their custody for almost 20 months. Father, however, remained incarcerated, with an expected release date of October 24, 2019, more than two years since the child was removed from her parents and beyond the maximum period for reunification services. Accordingly, even had the court made the finding father seeks and granted father additional reunification services, he still could not have reunified with the child. (See *In re Ronell A.*, *supra*, 44 Cal.App.4th at pp. 1365–1366.)

DISPOSITION

The petition is denied.

NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J. LAVIN, J.